SANITARY LEGISLATION.

COURT DECISIONS.

UNITED STATES DISTRICT COURT—EASTERN DISTRICT OF LOUISIANA.

New Orleans Rat-Proofing Ordinances [1] Held to be Valid.

MRS. WID. JOHN G. KUHLMAN, et als., v. DR. W. C. RUCKER, et als. (No. 15207. Mar. 13, 1915.)

The allegations of the bill in this case held to sustain the jurisdiction of the United States court on the ground that the case is one arising under the Constitution and laws of the United States.

A municipality, through its health officers and other proper agents, may enact measures for the safety and to preserve the health of its inhabitants, and it could not be considered unreasonable of itself to provide for the construction of buildings according to certain specifications to effect that end. And it is not unreasonable of itself that the mechanical work be done subject to the approval of some one in authority, such as the health officer, as some one must necessarily have supervision of the work in order to insure the proper observance of the law.

In view of the danger to the community from plague and the migratory habits of rats, it is reasonable to make rat-proofing ordinances apply throughout a city instead of restricting their operation to limited areas around known foci of infection.

On the facts presented to the court and for the purposes of a motion for a preliminary injunction, the court held that the New Orleans ordinances requiring rat proofing are reasonable, necessary, and appropriate.

The allegation that inspectors charged with the enforcement of ordinances are overzealous, arbitrary, and exceed their authority, even if true, does not furnish ground for an injunction stopping the entire work throughout the city.

The fact that compliance with ordinances requiring the rat proofing of buildings will work hardship to the owners of specific property is not sufficient cause for declaring the ordinances null and inoperative, as in matters affecting the health of the entire community the convenience of the individual must yield to the necessity of the whole people.

FOSTER, J.: This is a bill brought by five property owners of the city of New Orleans, on behalf of themselves jointly and severally and on behalf of some 200 other persons similarly situated, against surgeons of the United States Public Health Service; against the board of health of the city of New Orleans and its officers; and against the city of New Orleans, its mayor and various other officers.

The bill is long, with much specification and detail. Its material allegations, logically arranged, are as follows: That the various plaintiffs are owners of certain real estate and improvements in the city of New Orleans, described at length in the bill; that the buildings were erected prior to July 25, 1914, in conformity with the requirements and specifications of the then existing building laws of the city of New Orleans; that on July 25, 1914, on the pretense that an epidemic of human, and an epizootic of rodent, bubonic plague existed in New Orleans, the said board of health adopted certain ordinances, amended on September 8, 1914, designed to prevent the introduction and spread of bubonic plague in the city of New Orleans by providing for the rat proofing of all buildings and premises in the said city; that while the existence of some cases is not denied, said disease was not in fact either epidemic or epizootic in

[1] Public Health Reports Aug. 7, 1914, p. 2091 et seq., and Feb. 19, 1915, p. 597 et seq.

New Orleans on July 25, 1914; that the prevalence of bubonic plague was abated on or about September 15, 1914; that cases of human infection are easily isolated and cured by the use of serums and other specific treatment known to the science of medicine; that the foci of infection could be controlled by intensive rat catching and poisoning; that the ordinances are designed to compel the rat proofing of the whole city of New Orleans and the total cost of compliance therewith to the residents will be several million dollars, out of all proportion to the value of the property and beyond the means of most residents; that the plaintiffs have been notified by the defendants to rat proof the buildings owned by them; that no case of alleged bubonic plague, either human or rodent existed or appeared upon or near the property of plaintiffs at any time prior to the issuance of said unlawful notices; that the ordinances are unreasonable, unnecessary, and arbitrary, and their enforcement would cause the taking of plaintiffs' property without due process of law; that the defendants, in the enforcement of the said ordinances, are wrongfully exceeding their authority under the laws of the United States and the State of Louisiana and are guilty of gross discrimination; that the amount of property owned by each of plaintiffs is more than $15,000; that the value of their vested rights in same is inestimable in money but is of value far exceeding $5,000; that the penalties and fines for each alleged offense threatened against each of them at the minimum would exceed $3,000, with possible imprisonment on default of payment; that the cost of compliance with the ordinances would in each case exceed $3,000; that plaintiffs are threatened with a multiplicity of suits growing out of the adoption of the ordinances.

The bill prays that the ordinances be declared unconstitutional, null and void, and of no effect; that the defendants be restrained perpetually from executing, or attempting to execute, or enforce the same; that a temporary injunction issue; and for general and equitable relief.

Annexed to the bill are copies of the ordinances and the form of notice issued by the board of health through the United States officers. The ordinances provide for maximum fines of $25 for each day's violation by noncompliance after notices have been received.

To this the defendants have answered, denying generally and specifically the allegations of the bill, and setting up the reasonableness of the ordinances and the necessity for their enactment. Further, the answer challenges the jurisdiction of the court on the grounds that the matter in controversy does not exceed in value $3,000, exclusive of interest and costs, that the suit does not arise under the Constitution or laws of the United States, and that there is want of equity in the bill and misjoinder of parties plaintiff. Defendants also moved to dismiss the bill and prayed for a separate trial of the question of jurisdiction raised by the answer.

No restraining order was made on the filing of the bill, but a rule nisi issued on the application for a preliminary injunction, and this rule and the motion to dismiss were heard at the same time on ex parte affidavits.

At the outset, it is suggested by counsel that the case is one requiring the consideration of three judges under the provisions of article 266 of the Judicial Code. With regard to this, I have no doubt of my jurisdiction to sit in the case without the assistance of other judges. Article 266 of the Judicial Code should be strictly construed and it will be noted that it is only invoked when the proceeding is against a State officer. None of the defendants named in the bill is a State officer. They are either municipal officers or officers of the United States, and, furthermore, they are acting directly by virtue of city ordinances and not State laws. (Cumberland Telephone & Telegraph Co. *v.* Memphis, 198 Fed., 955.)

Taking up the objections to the jurisdiction in inverse order, it is well settled that two or more plaintiffs may join in a bill where their interests are identical and such procedure is to be favored. It is alleged that officers of the United States, acting in their official capacity by virtue of the laws of the United States, are enforcing the ordinances

and proceeding arbitrarily in excess of their authority. This of itself presents a Federal question as to those defendants. It is further alleged that the ordinances complained of are unnecessary and unreasonable and are being arbitrarily and unequally enforced so as to violate the plaintiffs' constitutional rights. It is well settled that, while a municipality has great latitude in adopting and enforcing ordinances designed to protect the public health and insure the public safety, such ordinances must be reasonable, necessary, and appropriate, and if not, their enforcement may be enjoined. The allegations of the bill are to be taken as true for the purpose of the motion to dismiss and are ample to sustain the jurisdiction on the ground that the case is one arising under the Constitution and laws of the United States. (Dobbins *v.* Los Angeles, 195 U. S., 223.) With regard to the amount involved, the bill alleges, in addition to the fictitious value set up of the rights involved, that in each instance plaintiffs will be compelled to expend an amount exceeding $3,000 in complying with the ordinances, which expenditures will be otherwise unnecessary and will be of no value to plaintiffs. The answer challenges the correctness of these allegations, but, while they are without detail, the amount is stated in each instance, and they can not be treated as mere legal conclusions. In support of the answer defendants have filed affidavits of persons having knowledge of the work necessary to be done, showing that the amount of expenditure in each instance to comply with the ordinances would be less than $3,000, and plaintiffs have filed counteraffidavits. It would be unsafe to determine this question on these ex parte affidavits. It has been suggested in argument that the expense to the owners of the property would not be merely the doing of the work necessary to comply with the strict letter of the ordinances, but that chimneys would have to be rebuilt, plumbing altered, and other repairs made to put the buildings in habitable condition and to conform to the state of repair in which they were before the alterations. Furthermore, it is not beyond the bounds of possibility that fines, exceeding in the aggregate the sum of $3,000, might be imposed on each of the plaintiffs. Therefore, on the face of the papers and proof before me, I must conclude that there is more than $3,000 involved as to each of the plaintiffs.

This brings up the consideration whether or not the preliminary injunction should issue. There is no prayer that defendants be restrained from proceeding against the plaintiffs individually on the ground that the ordinances are being improperly enforced against them, but relief is asked for on the broad ground that the ordinances are utterly null and void.

The affidavits of eminent doctors and scientists filed establish beyond question that there was enough bubonic plague, both human and rodent, in the city of New Orleans at the time the ordinances were adopted to make necessary drastic measures for its eradication. It is shown that bubonic plague is a disease of rats and is communicated by them to humans by the bite of fleas; that it is practically impossible to eradicate the disease in the rats; that the only means known to science of eradicating rats and of keeping them away from the vicinity of humans is to rat proof all buildings in the community, this in order to destroy the breeding places and harborages of rats and to prevent their obtaining food. It is further shown that certain rats become immune and become carriers of the disease, thereby affecting other rats, causing the germs to spread and multiply, and therefore as long as any rats remain in the community and there is a possibility of their coming in contact with humans there is danger of reinfection and of an epidemic in humans; that the mortality from the disease is about 60 per cent under the most favorable conditions; that isolation of human cases and treatment by serums is of little effect in stamping out the disease; that in places where no preventive measures are taken and no rat proofing of buildings is done the disease recurs annually and great numbers of cases develop with consequent large loss of life; that where effective rat proofing has been done the disease does not recur; that in the opinion of the medical experts, who are familiar with the ordinances in question and general conditions in the city of New Orleans, the ordinances are reasonable and

necessary and are calculated to be highly efficacious in preventing a recrudescence of the disease.

It is well settled that a municipality, through its health officers and other proper agents, may enact measures for the safety and to preserve the health of its inhabitants, and it could not be considered unreasonable of itself to provide for the construction of buildings according to certain specifications to effect that end. And it is not unreasonable of itself that the mechanical work be done subject to the approval of some one in authority, such as the health officer, as some one must necessarily have supervision of the work in order to insure the proper observance of the law. It is contended by the plaintiffs, and urged with great earnestness, that as no case of infection, either human or rodent, has developed in the vicinity of their respective properties, the ordinances as applied to them are unreasonable on their faces, as they require rat proofing to be done throughout the length and breadth of the city without restricting it to limited areas around known foci of infection. With regard to communicable diseases proximity is a merely relative term. Quarantines are established and maintained against points thousands of miles away. It is shown that rats travel far in search of food, that they always leave the vicinity of a sick rat and most probably all rats that have been in contact with an infected rat are themselves affected. Therefore there is no telling to what locality and to what distance infection may be carried. It is shown that the known foci of infection are widely scattered throughout the city so that it is possible for affected rats to have sought refuge in the buildings owned by plaintiffs as well as in every other building in the city of New Orleans where they could find safe harborages.

In the light of the facts before me the danger from bubonic plague in New Orleans is still apparent and real, as much so, in fact, as would be the danger from a similar number of cases of yellow fever if no preventive measures were taken. Of course the general public of New Orleans is well acquainted with the disease of yellow fever, and it is not probable that any intelligent person could be found in the city who would now protest against the ordinances heretofore enacted, requiring the screening and oiling of cisterns and their subsequent demolition to prevent the breeding of the Stegomyia mosquito or who would consider such ordinances unreasonable because no case of infection had developed in close proximity to his particular property. I can see no difference whatever in the danger from infection of yellow fever and the danger from infection of bubonic plague in the absence of effective preventive measures, except, perhaps, that it is less in the former case, owing to the advance of medicine in the scientific treatment of the disease.

On the facts before me, for the purposes of the motion for a preliminary injunction, I am constrained to hold that the ordinances are reasonable, necessary, and appropriate.

It would appear from the affidavits of plaintiffs that in some instances the inspectors charged with the enforcement of the ordinances have been overzealous and arbitrary, and have exceeded their authority. It is only fair to say this is strenuously denied; but, if true, in a work of such magnitude, while to be deplored, such incidents are to be expected and would furnish no ground for an injunction stopping the entire work throughout the city. Also, there can be no doubt that in many instances compliance with the ordinances will work real hardship to the owners of specific property, but neither is this sufficient cause to declare the ordinances null and inoperative, as in matters affecting the health of the entire community the convenience of the individual must yield to the necessity of the whole people.

The motion for a preliminary injunction will be denied.